IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 609 OF 2004

Smt. Shalini Ravindra Bhave ..Appellant

versus

Mrs. Shila Hari Apte ..Respondent

Ms. Gauri Godse for the Appellant.

None for the Respondent.

CORAM : D. G. DESHPANDE,J.

DATE : 12TH SEPTEMBER,2005

ORAL ORDER :

1. Heard learned Advocate for the Appellant. None for the Respondent.

2. Respondent filed an application for probate. Respondent is the daughter of the deceased, whereas the appellant is the daughter in law. The Court accepted the contention of the respondent and held that the Will was genuine and proved. Appellant's case was that when the testator executed the Will she was so old that she was not able to understand what she was doing and taking disadvantage of that, the Will was got executed. However, the appellant

did not examine herself and tried to rely upon the testimony of the power of attorney holder. In this background, the trial court rightly rejected the claim of the appellant because these facts are to be proved from the personal knowledge of the appellant. There cannot be any substitute for this. Appellant failed to prove other suspicious circumstances regarding the Will. Therefore, there is no merit in this appeal. Even otherwise if the appellant has share in the property she has to file a civil suit. Counsel for the appellant therefore contended that the appellant has already filed a Civil Suit being Special Civil Suit No. 306 of 2005 and that suit is for a declaration that the deceased had no right to execute the Will in respect of the entire property. She also contends that there are certain shares in her name i.e. in the name of the appellant and necessary clarification in that regard may be given.

3. Appeal is dismissed as there is no merit. In view of the above, Civil Application No. 4437 of 2003 also stands disposed of. It is clarified that the appellant will be entitled to take out appropriate proceedings in the said suit for protection of her interest in the shares, which are standing in her name.

12.9.2005 (D.G. DESHPANDE, J.)